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Reserved

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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Allahabad this the 30<sup>th</sup> Nov' 1994.

Original Application no. 1060 of 1988.

Hon'ble Mr. K. Muthukumar, A.M.

Hon'ble Mr. J.S. Dhaliwal, J.M.

Braj Pal Yadav, S/o Sri Har Pal Yadav,

aged about 28 years, Working as Lower Division Clerk,

Works Office, Ordnance Equipment Factory,

Kanpur.

..... Applicant.

By Advocate Sri N.K. Nair.

Versus

1. Union of India,

Through the Secretary,

Ministry of Defence Production,

Government of India,

New Delhi.

2. The Additional Director General

of Ordnance Factories, Ordnance Equipment Factories

Group Head Quarters, ESIC Bhawan, Sarvodaya Nagar,

Kanpur.

3. The General Manager,

Ordnance Equipment Factory,

Kanpur.

.... Respondents.

By Advocate Sri Amit Sthalekar.

( ORDER )

By Hon'ble Mr. K. Muthukumar, A.M.

The applicant was given an appointment  
as Cheker on a casual basis on compassionate ground

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in the Ordnance Equipment Factory, Kanpur, when his father who was Fire Driver in the Factory met with an accident and was declared medically unfit. Initially he was appointed for a period of 89 days w.e.f. 1.1.1980 on the pay ~~scale~~ of Rs 225/- per month as admissible under the rules and thereafter he was again continued for another spell of 89 days after a break of two days from the first spell. He was later appointed on a casual basis from 1.7.1980, again on the casual basis for a period of 89 days and vide an order dt. 29.1.1981 (Annexure-A-5 of the respondents) was promoted to the post of L.D.C w.e.f. 15.1.1981 and was placed on probation for a period of two years. The applicant was made quasi -permanent checker w.e.f. 1.7.1983 by the order dt. 22.2.1986 (Annexure-A-8) passed by the respondents. The applicant is aggrieved that he ought to have been appointed as L.D.C, as he was Intermediate passed and was performing the duties of Lower Division Clerk even from the initial date of casual appointment as Checker. The applicant is further aggrieved that his name is shown in the seniority list, reckoning his seniority w.e.f. 15.1.1981 whereas he ought to have been granted the seniority, treating the applicant's appointment in the cadre of the L.D.C w.e.f. 1.1.1980, the initial date of appointment, ~~of the respondents~~. The following averments are made in support of his contention:-

1) In similar cases, where qualified persons who were performing the duties of clerks, were designated as Checker and thereafter were re-designated as L.D.C on the basis of the decision by the Apex Court in the case of Lal Ji Dubey and others Versus U.O.I. &

others AIR 1974 Supreme Court 252.

b) The respondents have also re-designated the post of Chaker as L.D.C in respect of certain applicants before the Central Administrative Tribunal in the cases of Mohd. Halim Siddiqui Versus U.O.I. & others T.A. No. 1100 of 1986, K.S. Hukku Versus U.O.I. & others T.A. No. 1104 of 1986 and Asharfi Lal Gupta Versus U.O.I. & others T.A. No. 916 of 1986 w.e.f. 1.9.1953 with all consequential reliefs.

c) In a similar case of compassionate appointment also of one Mrs. M.D. William, the respondents had appointed her initially from 12.11.1979 as L.D.C and she was given artificial breaks in service which were condoned and she had been shown to have been appointed on the temporary basis on regular capacity from the initial date of appointment.

d) By the order dt. 17.4.1979 the Director General of Ordnance Factories/ Ministry of Defence, had ordered that while filling up the existing and future vacancies in the grade of L.D.C, 50% by direct recruitment and 50% by promotion from existing chekers, it was clearly ordered that the existing and the vacancies arising on account of promotion of chekers to the grade of L.D.C, will not be filled. Therefore, in the light of this order, the respondents had clearly violated the order by appointing the applicant initially on a casual basis as a cheker when it was clearly evident that such an appointment was not contemplated in the above order.

2. In the light of the above contentions and the averments made in the application, the applicant has approached this Tribunal with a prayer to direct the

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respondents to recast the seniority list treating the  
of his  
applicant in the cadre of L.D.C from the date/initial  
appointment w.e.f. 1.1.1980 alongwith all consequential  
reliefs.

3. The respondents have resisted this application  
on the following grounds:-

a) The appointment of the applicant was made on  
compassionate ground as per the scheme in the post of  
Cheker for which the candidates was adjudged suitable /  
eligible by the Board constituted for the purpose without  
reference to the local Employment Exchange. ~~and the applicant~~  
~~was found suitable for the post of Cheker. The applicant~~  
was promoted to the post of L.D.C w.e.f. 15.1.1981 by a  
duly constituted Departmental Promotion Committee and  
was assigned the seniority w.e.f. that date and he was  
not entitled to the higher seniority reckoned from the  
date of his initial appointment as Cheker.

b) The applicant had accepted the initial offer  
of appointment as Cheker for which he was found eligible  
and, therefore, his contention that he was eligible  
for the post of L.D.C is not tenable and if the applicant  
had any objection he should not/accepted the same. He  
can not claim this after a gap of eight years.

c) The contention that the similarly situated  
candidate Mrs. M.D. William was appointed as L.D.C  
and was given seniority from the date of initial appoint-  
ment, is also not tenable as Mrs. William was a graduate  
and was found to be suitable for the post of L.D.C by  
the Board at the time of the ~~initial~~ appointment.

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d) The other contention of the applicant that ~~the~~ certain posts were re-designated as L.D.C on the basis of the Apex Court decision in Lal Ji Dubey Versus U.O.I. & others following the recommendation of Kalyan Wala Committee Report, and, therefore, he is also entitled to the such re-designation is not tenable as the Apex Court decision related to those checkers appointed prior to 1953 provided, they were Matriculates and non Matriculates who have completed three years subject to suitability. The request of the applicant for the re-designation of his post to that of the L.D.C is also not justified.

4. In view of the fact that the applicant was appointed on ~~the~~ compassionate ground, ~~and~~ his claim for the higher post can not be considered. In the light of the instruction contained in the Ministry of Home Affairs, Department of Personnel O.M. dated 25.11.1978 which clearly stipulates that once a person accepts the compassionate appointment of the particular posts, the set of the circumstances which led to his initial appointment should be deemed to have ~~the~~ should ceased to exist and, thereafter, a person / may strive in his carrier for future advancement and claim for appointment in such cases to the higher post/ may be rejected.

5. The learned counsel for the parties argued on their pleadings.

6. We have heard the learned counsel for the parties and perused the record.

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7. It is necessary to first dispose of the contention of the applicant that, following the directions of the Apex Court in the Civil Appeal No. 1987 / 68 (AIR 1974 Supreme Court 252), the D.G.O.F was directed to reclassify and redesignate the post of Appellants in the Cheker Grade I and II in Ordnance Factories, the ~~were~~ duties of which ~~were~~ substantially clerical, as Lower Division Clerks, in accordance with the directions contained in the Government of India's letter dt. 17.11.1953. The redesignation was to be made as per this letter if the then incumbents of the posts were ~~were~~ matriculates. If they ~~were~~ non-matriculates they should have completed three years of continuous service as Chekers. The Apex Court, however, while allowing the appeal, held as follows:-

" 15 \* \* \* \*

The Appellants were, therefore, entitled to be designated as Lower Division Clerks, in accordance with the directions contained in the letter dt. 17.11.1953. There has been arbitrary discrimination against the Appellants.

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17. It is not necessary to express any opinion as to whether the letter dt. 17.11.53 became a rule under Article 309 of the Constitution. For the purpose of the appeal it is sufficient to hold that the letter has been accepted by the authorities and given effect to in the case of some of the employees.

18. For these reasons the Appellants are entitled to succeed. The Appellant's appeal is accepted the judgement of the High Court is set-aside."

It is, however, seen that the Ministry of Defence have published the statutory rules called "The Ordnance Factory and Ordnance Equipment Factory (Group-C

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non Industrial Post) Amendment Rules 1979." These rules were made under Article 309 of the Constitution.

These rules are annexed by the applicant to Annexure-6. It is seen from the rules that the schedule to the above rules were amended as follows:-

" a. 50% by direct recruitments 1/5th of vacancies reserved for direct recruitment shall be filled by appointment of educationally qualified Group-D Employees having at least 5 years service and born on regular establishment, on the basis of competitive departmental test, the maximum age for appearing at the test shall be 45 years (50 years for the SC/ST). By promotion from Group-C Departmental Checkers with at least 5 years service in the grade III (Factories) and possessing Matriculation or equivalent qualifications. General Manager and two other officers to be nominated by the DGDF.

b. 50% by promotion."

8. From the above it is evident that the recruitment rules were subsequently framed after the decision of the Apex Court in the case of Lal Ji Dubey Supra. As may be seen from the amended schedule to the aforesaid rules, there is a provision for direct recruitments of the Lower Division Clerks up to 50% by promotion from the cadre of Checkers with atleast five years service in the grade and possessing Matriculation or equivalent qualification. Following the issue of recruitment rules, orders were issued for filling up the vacancies in the cadre of Lower Division Clerks by the Ministry of Defence letter dt. 17.4.1979 (Annexure-6). This provides for promotion quota of 50% and filling up the vacancies to the extent of 50%

from promotion of Checker . It was, however, ordered that the existing and the resulting vacancies arising out of promotion of Checkers as per this order would not be filled. From this it does not follow at all that the cadre of Checkers ceased to exist. No such inference can be drawn as ~~anyway KMO KMO KMO~~ the Recruitment rules themselves provide for filling up the vacancies of Lower Division Clerks from the grade of Checkers. It is no doubt true that the vacancies in the category of Checkers was ordered not to be filled. This could, however, not be permanent as injunction particularly/the scheme itself provided for promotion of Checkers to the category of Lower Division Clerks. The counsel for the applicant has not shown any other material in support of his assertion that the Checkers category has become non existent in pursuance of this order. Therefore, main contention of the counsel for the applicant is that the respondents should not have appointed the applicant as a Casual Checker in the first place. in the light of the above order is not tenable. The counsel for the applicant also referred to the decision of this Tribunal mentioned in para 1(b) above. These decisions are also not relevant in this case, as these relates to such of those Checkers who were in position in 1953 and were governed by the orders issued by the respondents on 17.11.1953 referred to in para 8 of the application. The applicant in this case, however, was appointed after the publication of the Recruitment rules in 1970. On this score the applicant does not derive any vested right for appointment as Lower Division Clerk or the benefit of re-designation of his initial post of Checker as Lower Division Clerk.

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9. In regard to the second contention that another candidate/ who was similarly placed as the applicant and was also appointed on compassionate ground but appointed as Lower Division Clerk and was regularised from initial date of appointment on 1.1.1980 as L.D.C, we find that this has been contested by the respondents in the counter reply on two grounds, namely:-

a) The initial compassionate appointment was made as L.D.C only on the casual basis from 1.1.1980, the candidate was also a graduate. The initial appointment was made as L.D.C as the Board of Officers found her suitable for the appointment whereas the applicant who was not a graduate, was found suitable for the post of Checker.

b) The other candidate was also not regularised from the initial date of casual appointment but was regularised only from the subsequent date i.e, 1.7.1980. The earlier order the regularising him from the initial date was also cancelled as it was found that the original order was issued inadvertently, this cancellation has been annexed by the respondents in Annexure C.A-3.

10. From these averments of the respondents , we find that the case of Mrs. M.D. Williams is not on par / the applicant and there is no ground to give the relief to the applicant merely on this score.

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11. The respondents have also contended that the applicant had accepted the initial appointment as Checker on casual basis which was offered to him on compassionate ground and can not claim for higher grade after the lapse of eight years. We find that there is sufficient force in the contention. Although the applicant ~~might have been~~ <sup>been</sup> eligible for the post of L.D.C, he was offered on compassionate ground, the post of Checker on casual basis which he had accepted. Besides, the respondents have also promoted him to the post of L.D.C on 15.1.1981, although strictly speaking as per the recruitment rules, he would become eligible for such appointment after the completion of five years service in the grade of Checkers. We, however, do not wish to interfere with this matter on this ground. The respondents have also declared, by the order dated 22.2.1986, the applicant as quasi permanent retrospectively w.e.f. 1.7.1983; in other words, it was been made sufficiently clear that by virtue of his continuous appointment as Checker w.e.f. 1.7.1980, he became eligible for being declared as quasi permanent w.e.f. 1.7.1983, although in the intervening period, the respondents had promoted him to officiate on the post of L.D.C w.e.f. 15.1.1981. There is nothing to suggest ~~or suggest~~ that the initial appointment as Checker was made in a malafide manner. Besides, the applicant had also accepted this offer. He has no vested right ~~on~~ initial appointment as Lower Division Clerk on compassionate ground nor he had any right

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to contest the seniority position as made out in his application.

12. In the light of the above discussions, we find that the application is devoid of merit and is therefore, dismissed. No order as to costs.

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Member (J)

ALLAHABAD: DATED: 30.7.94  
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Member (A)